

REMARKS

The Office Action mailed December 28, 2007 has been carefully considered. Reconsideration in view of the following remarks is respectfully requested.

Subject Matter Indicated Allowed or Allowable

Applicants gratefully acknowledge the indication of allowability of claims 3, 8, 12 and 15, subject to their re-writing in independent form. As explained below, Applicants maintain that the base claims from which claims 3, 8, 12 and 15 depend are allowable on their merit, and such rewriting is unnecessary.

Rejection(s) Under 35 U.S.C. § 102

Claims 13-14 stand rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by Bell (U.S. pat. no. 6,701,443). Applicants respectfully traverse.

Claim 13 states that each port has a physical layer, that the physical layer includes an inline power control signal source, and that the inline power control signal source originating from the physical layer controls application of power to the port. The Office Action alleges that in Bell, an inline power control signal, from control circuitry 80 instructing switch 84 to close, originates from the physical layer ("control circuitry 80 originates from the physical layer because it is within the hardware and thus the signal is originating/included on the physical layer"; Office Action, Item #3, paragraph bridging pages 2 and 3).

However, as previously explained, Bell does not disclose an inline power control signal source included in the physical layer. In particular, Bell states the following:

FIG. 1 shows a remote powerability system 20 which is suitable for use by the invention. The system 20 is a computer network which includes a device 22-A (e.g., an IP phone) and a device 22-B (e.g., an IP switch). The devices 22-A, 22-B (collectively, devices 22) communicate with each other through a connecting medium 24. *In one arrangement, the devices 22 include physical layer devices (PHY), and the connecting medium 24 includes a Medium Dependent Interface (MDI) having multiple lines for carrying signals between the devices 22 (e.g., 10BaseT, 100BaseT, etc.). The system 20 further includes a*

power apparatus 26 which connects with the device 22-B through connections 28. The power apparatus 26 includes a controller 30, a signal generator 32 and a detector 34.

(Bell, Col. 4, lines 18 – 33) (emphasis added)

This portion of Bell makes clear that the physical layer is included in devices 22 (see Bell, Figure 1). Figure 3 shows clearly that it is power apparatus 26 that contains control circuitry 80. Therefore if a physical layer is included in Bell, it is included in device 22 and not power apparatus 26. Therefore, the physical layer (included in devices 22) cannot be the inline power control signal source as claimed.

It will be appreciated that, according to the M.P.E.P., a claim is anticipated under 35 U.S.C. § 102 only if each and every claim element is found, either expressly or inherently described, in a single prior art reference.¹ The aforementioned reasons clearly indicate the contrary, and withdrawal of the 35 U.S.C. § 102 rejection of claim 13, and of claim 14 dependent therefrom, based on Bell is respectfully urged.

Rejection(s) Under 35 U.S.C. § 103 (a)

Claims 1-2, 4-7 and 9-11 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Bell further in view of Gephardt et al. (U.S. pat. no. 5,640,573; hereinafter, “Gephardt”). Applicants respectfully traverse.

As explained above, Bell does not disclose an inline power control signal source included in the physical layer. This deficiency is not cured by Gephardt, which in any case is not properly combinable with Bell. Specifically, Gephardt makes no mention of a physical layer that sources a power control signal source as is presently claimed, and neither patent suggests such a feature. Accordingly, the combination of Bell and Gephardt would not meet or render obvious all of the limitations of independent claims 1-2, 4-7 and 9-11, which include an inline power control signal source originating from the physical layer.

Moreover, the combination of Bell and Gephardt is improper. Gephardt is directed to power management in a single processing device, such as a “486” personal computer (Gephardt, col. 4, l. 21). Gephardt proposes to encode a message on a power management message bus (210) to thereby provide information regarding the internal events of an integrated processor (202) of the processing device to an external power management unit (208) of the processing device. (Gephardt, col. 2, ll. 25-29). All of these components are within the same processing device, typically on the motherboard of the personal computer. Importantly, such technology is unrelated to the network power systems to which Bell and the presently claimed invention are directed, in which discrete devices, such as network switches, telephones, and computers, can provide power to one another over the data transmission media connecting them. Thus Gephardt is not in the same field of endeavor as either Bell or the present invention, and the ordinarily skilled artisan would not look to Gephardt for improvements or modifications to Bell, such that present invention can be achieved. The contention that Bell and Gephardt are combinable is impermissibly grounded in hindsight gleaned from applicants disclosure, and is legally untenable.

According to the Manual of Patent Examining Procedure (M.P.E.P.),

To establish a *prima facie* case of obviousness, three basic criteria must be met. First there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in the applicant's disclosure.²

In this case, the rejection based on the combination of the Bell and Gephardt fails to rise to the level of a *prima facie* case of obviousness, at least for the reasons outlined above.

¹ Manual of Patent Examining Procedure (MPEP) § 2131. See also *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

² M.P.E.P § 2143.

Accordingly, it is respectfully urged that the obviousness rejection of claims 1-2, 4-7 and 9-11 is improper and should be withdrawn.

Conclusion


In view of the preceding discussion, Applicants respectfully urge that the claims of the present application define patentable subject matter and should be passed to allowance.

If the Examiner believes that a telephone call would help advance prosecution of the present invention, the Examiner is kindly invited to call the undersigned attorney at the number below.

Please charge any additional required fees, including those necessary to obtain extensions of time to render timely the filing of the instant Amendment and/or Reply to Office Action, or credit any overpayment not otherwise credited, to our deposit account no. 50-1698.

Respectfully submitted,
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